

EXHIBIT 15

REDACTED

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THE STATE OF TEXAS, et
al.,

Plaintiffs,

- against -

GOOGLE LLC,

Defendant.

Case No.

4:20-cv-00957-SD

HIGHLY CONFIDENTIAL ORAL AND VIDEOTAPED DEPOSITION OF

JOSHUA GANS

OCTOBER 10, 2024

ORAL AND VIDEOTAPED DEPOSITION of JOSHUA GANS,
produced as a witness at the instance of the
Defendant, and duly sworn, was taken in the
above-styled and numbered cause on October 10, 2024,
from 9:00 a.m. to 7:35 p.m., before Mendy A.
Schneider, CSR, RPR, in and for the State of Texas,
recorded by machine shorthand, at the offices of
NORTON ROSE FULBRIGHT, 1550 Lamar, Suite 2000,
Houston, Texas, pursuant to the Federal Rules of Civil
Procedure and the provisions stated on the record or
attached hereto; that the deposition shall be read and
signed.

Job No. CS6922874

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1 profitability.

2 Q. (BY MR. EWALT) Where does it describe
3 profitability in Paragraph 159?

4 A. I said it described the components of it,
5 the -- which is the amount of sales that would be lost
6 should publishers be considering changing their
7 business model to a subscription model.

8 Q. Do you reach any conclusion as to whether it
9 would be profitable for publishers to change their
10 business model to a subscription model?

11 A. I do.

12 Q. Where?

13 A. In the components that would be significantly
14 costly and so.

15 Q. So you don't use the word "profit"?

16 A. I don't use the word "profit." I said I
17 looked at the components of profit.

18 MS. YOUNG: And let him finish his
19 question before you answer. You talked over each
20 other a little there.

21 Q. (BY MR. EWALT) All right, sir, let's talk
22 about ad exchanges.

23 Is the key function of an ad exchange to match
24 buyers and sellers of display advertising?

25 MS. YOUNG: Objection; form.

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1 A. It is to do so using information and bids.

2 Q. (BY MR. EWALT) So you agree then that a key
3 function of an ad exchange is to match buyers and
4 sellers of display advertising?

5 MS. YOUNG: Same objection.

6 A. It is to find opportunities for matches and
7 to communicate those to the parties.

8 Q. (BY MR. EWALT) For each transaction on an ad
9 exchange, is there always exactly one buyer and one
10 seller?

11 MS. YOUNG: Objection to form.

12 A. If a transaction is completed? You mean if a
13 match is found?

14 Q. (BY MR. EWALT) (Nodding head.)

15 A. From the point of view of the ad exchange,
16 yes.

17 Q. For each transaction on an ad exchange, do
18 the buyer and seller interact simultaneously?

19 MS. YOUNG: Objection; form.

20 A. The buyer and seller submit information to
21 the ad exchange. And the ad exchange considers that
22 information together which from an economist point of
23 view would be simultaneous.

24 Q. (BY MR. EWALT) Are there indirect network
25 effects between publishers and advertisers in the

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1 market for ad exchanges?

2 A. Yes.

3 Q. Are ad exchanges two-sided transaction
4 platforms?

5 A. That is a word that you could use for them.

6 Q. When you define a market for ad exchanges,
7 did you focus on how publishers would respond to a
8 SSNIP?

9 MS. YOUNG: Objection; form.

10 A. I -- I focused on should the amount that the
11 ad exchange is charging publishes in terms of taking
12 revenue from advertisers if that increased what the
13 publisher's substitution options would be.

14 Q. (BY MR. EWALT) When you defined a market for
15 ad exchanges, did you consider advertisers' options in
16 response to a SSNIP?

17 MS. YOUNG: Objection; form.

18 A. For advertisers, the consideration would
19 be -- would require substitution, would be things that
20 were -- were -- were part of the terms of trade that
21 were not necessarily the take rate of the ad exchange.

22 Q. (BY MR. EWALT) So did you not consider
23 advertiser responses to a SSNIP when you were defining
24 a market for ad exchanges?

25 A. Well --

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1 MS. YOUNG: Objection; form.

2 You may answer.

3 A. Well, in this particular case, the
4 substitution triggers for advertisers would be perhaps
5 what you would regard -- what we would regard as
6 nonprice.

7 Q. (BY MR. EWALT) Okay. I'm just asking what
8 you did.

9 A. Yeah.

10 Q. Did you consider advertiser responses to a
11 SSNIP when you were defining a market for ad
12 exchanges?

13 MS. YOUNG: Same objection.

14 A. I can't recall whether I looked at that
15 particularly given the way that I -- it's in my mind
16 now, but we could have a look at the report to see.

17 Q. (BY MR. EWALT) Well, how do you -- let's
18 not -- let's step back and say -- let me -- let me go
19 back for one second.

20 You said that you could define ad exchanges --
21 you could consider ad exchanges to be a two-sided
22 transaction platform, right?

23 A. Yes.

24 Q. Do you consider ad exchanges to be a
25 two-sided transaction platform?

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1 MS. YOUNG: Objection; form.

2 A. The ad exchange itself is performing the
3 function of matching given the information from
4 advertisers and publishers.

5 Q. (BY MR. EWALT) Okay. So, yes or no, do you
6 consider ad exchanges to be two-sided transaction
7 platforms?

8 MS. YOUNG: Objection; form.

9 Go ahead.

10 A. The -- my reason for hesitation in sort of
11 doing that word -- well, let me -- let me put it this
12 way, and maybe this will be easier on us.

13 Can you define what you mean by
14 "two-sided transaction platform"?

15 Q. (BY MR. EWALT) So we've been talking about
16 it. I understand it's a term of art in economics.

17 A. It is?

18 Q. It's -- do you disagree? Do you think it --
19 a two-sided transaction platform is not an economic
20 term?

21 A. I think "two-sided platform" is or --
22 "multi-sided platform" is a term of art in economics.

23 I think "multi-sided matching" is a term
24 of art in -- in economics.

25 I am concerned when you insert the word

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1 "transaction" into it you are meaning something
2 different --

3 Q. Okay.

4 A. -- than those.

5 Q. That's fair.

6 Are ad exchange -- strike that.

7 Do you consider ad exchanges to be
8 two-sided platforms?

9 MS. YOUNG: Objection; form.

10 A. I do.

11 Q. (BY MR. EWALT) Do you consider ad exchanges
12 to be two-sided platforms that match publishers and
13 advertisers?

14 MS. YOUNG: Objection; form.

15 A. That match publishers and advertisers based
16 on the information submitted to the platform.

17 Q. (BY MR. EWALT) Do you consider ad exchanges
18 to be two-sided platforms that match publishers and
19 advertisers based on information submitted to the
20 platform?

21 MS. YOUNG: Objection; form.

22 A. Yes.

23 Q. (BY MR. EWALT) Okay. So why don't we just
24 take a moment here and you can review your report --
25 both reports and refresh your memory as to whether you

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1 their advertisements shown to consumers who might buy
2 their products?

3 A. Yes, for the majority of advertisers.

4 Q. Can advertisers reach consumers using display
5 advertising on the open web?

6 A. They can.

7 Q. Can advertisers reach consumers using
8 advertiser -- advertising on social media websites
9 like Instagram and TikTok?

10 A. They can.

11 Q. Can advertisers reach consumers using
12 advertising on retail websites like Amazon and
13 Walmart?

14 A. Depending on whether their products are
15 available in those platforms, yes.

16 Q. Can advertisers reach consumers using
17 advertising in mobile apps?

18 A. It is possible.

19 Q. Can Advertisers reach consumers through
20 Direct Deals with publishers?

21 MS. YOUNG: Objection; form.

22 A. If they strike a direct deal with the right
23 sort of publisher, yes.

24 Q. (BY MR. EWALT) Can advertisers reach
25 consumers using advertising in streaming services or

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1 Q. (BY MR. EWALT) Does Google Ads have unique
2 product features as compared to other ad-buying tools
3 for small advertisers?

4 A. Yes.

5 MS. YOUNG: Objection; form.

6 Go ahead.

7 A. Yes.

8 Q. (BY MR. EWALT) Do these unique features make
9 Google Ads a relatively high quality ad-buying tool
10 for small advertisers?

11 MS. YOUNG: Objection; form.

12 A. Those features mean that compared to other
13 ad-buying tools for small advertisers there are
14 distinctive features whereby advertisers can derive
15 value from Google relative to those others.

16 Q. (BY MR. EWALT) In your reports, have you
17 expressed the opinion that Google has monopoly power
18 in the market for ad-buying tools for large
19 advertisers?

20 A. I have not.

21 Q. In your reports, have you expressed the
22 opinion that Google has a dangerous probability of
23 achieving monopoly power in the market for ad-buying
24 tools for large advertisers?

25 A. I have not.

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1 MS. YOUNG: Objection; form.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Q. (BY MR. EWALT) All right. Let's turn to your
12 rebuttal report, Page 9.

13 A. Yes.

14 Q. Does Table 1 provide a summary of your
15 opinions in this case?

16 A. Yes.

17 Q. Does the column titled "Relevant Market"
18 describe each of the markets that you've defined to be
19 relevant markets in this case?

20 A. Yes.

21 Q. Does the column titled "Conduct Affecting the
22 Relevant Market" describe the only conduct that you're
23 opining affected each of the relevant markets that
24 you've defined?

25 MS. YOUNG: Objection; form.

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1 A. Yes.

2 Q. (BY MR. EWALT) In either of your reports did
3 you express an opinion about whether any conduct,
4 other than the alleged tying, affected the publisher
5 ad server market?

6 A. The -- sorry, can you repeat that question
7 again.

8 Q. In either of your reports did you express an
9 opinion about whether any conduct, other than the
10 alleged tying, affected the publisher ad server
11 market?

12 MS. YOUNG: Objection; form.

13 A. Some of the conduct did affect those, but the
14 market for -- that was relevant for competitive harm
15 was only with tying that it was affecting
16 competitive -- impacting on competition in that
17 market.

18 Q. (BY MR. EWALT) I see.

19 In either of your reports did you express an
20 opinion about whether any conduct, other than the
21 alleged tying, harmed competition in the publisher ad
22 server market?

23 MS. YOUNG: Objection; form.

24 A. I did not.

25 Q. (BY MR. EWALT) In either of your reports did

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1 you express -- did you express an opinion about
2 whether any conduct, other than Bernanke and Global
3 Bernanke harmed competition in the market for
4 ad-buying tools for small advertisers?

5 A. I did not.

6 MS. YOUNG: Objection; form.

7 THE WITNESS: Oh, sorry.

8 MS. YOUNG: Go ahead.

9 A. I did not.

10 Q. (BY MR. EWALT) In either of your reports did
11 you express an opinion about whether any conduct,
12 other than UPR, harmed competition in the market for
13 ad-buying tools for large advertisers?

14 MS. YOUNG: Objection; form.

15 A. I don't believe I did.

16 Q. (BY MR. EWALT) In either of your reports did
17 you express an opinion about whether any conduct
18 affected -- strike that.

19 In either of your reports did you -- did --
20 strike it again.

21 In either of your reports did you express an
22 opinion about whether competition in the ad exchange
23 market was harmed by conduct, other than UPR, Dynamic
24 Allocation, Enhanced Dynamic Allocation, line item
25 limitations, data field redactions, Bernanke, Global

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1 Bernanke, and DRS?

2 A. I don't --

3 MS. YOUNG: Objection; form.

4 A. I didn't.

5 Q. (BY MR. EWALT) In either of your reports did
6 you express an opinion that RPO harmed competition in
7 any market?

8 MS. YOUNG: Objection; form.

9 A. I did not.

10 Q. (BY MR. EWALT) In either of your reports did
11 you express an opinion that exchange bidding harmed
12 competition in any market?

13 MS. YOUNG: Firm.

14 A. That exchange bidding itself, I did not.

15 Q. (BY MR. EWALT) In either of your reports did
16 you express an opinion that Open Bidding harmed
17 competition in any market?

18 MS. YOUNG: Objection; form.

19 A. Open Bidding itself, I did not.

20 Q. (BY MR. EWALT) In either of your reports did
21 you express an opinion that the network bidding
22 agreement between Google and Facebook harmed
23 competition in any market?

24 A. I did not.

25 Q. In either of your reports did you express an

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1 opinion that Project Poirot harmed competition in any
2 market?

3 MS. YOUNG: Objection; form.

4 A. I did not express an opinion.

5 Q. (BY MR. EWALT) In either of your reports did
6 you express your opinion in your report that
7 Project Elmo harmed competition in any market?

8 MS. YOUNG: Objection; form.

9 A. Project Elmo. Right. I did not.

10 Q. (BY MR. EWALT) In either of your reports did
11 you express an opinion that Project Bell harmed
12 competition in any market?

13 MS. YOUNG: Objection; form.

14 A. I'm forgetting whether Project Bell was also
15 a name for something else, so I can't recall.

16 Q. (BY MR. EWALT) Okay. In either of your
17 reports did you express an opinion that Privacy
18 Sandbox harmed competition in any market?

19 A. I did not separately evaluate Privacy
20 Sandbox.

21 Q. Do you see that the middle column of Table 1
22 in your rebuttal report is titled "Google's Estimated
23 Market Share Across the Relevant Time Period"?

24 A. Yes.

25 Q. Why do you have "NA" in the row for large

advertiser buying tools market, in that column?

A. Because I didn't attempt to calculation of its market share or try to estimate it through other means.

Q.

MS. YOUNG: Objection; form.

A.

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1 didn't -- I -- I -- I didn't listen to your question.
2 I -- I led Google's market share and I didn't think
3 about the dates when I answered your question.

4 Q. Okay. Well, but even putting aside whether
5 it was, you know, Google or DoubleClick that owned the
6 exchange --

7 A. Yes.

8 Q. -- you're aware that in 2007, that exchange
9 was nascent, it had no market share in 2007?

10 A. Yes, that's correct.

11 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 A. So let's be very clear because this is a
16 summary table. When we talk about the conducts of
17 Dynamic Allocation and Enhanced Dynamic Allocation,
18 I'm talking -- the conduct that I have at issue is not
19 that there was Dynamic Allocation or Enhanced Dynamic
20 Allocation but Google-specific implementation of it
21 which did not occur until Google had an ad exchange.

22 Q. (BY MR. EWALT) Okay. And so you understand
23 that Google had an ad exchange in 2008?

24 MS. YOUNG: Objection; form.

25 A. Google had acquired DoubleClick and then had

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1 A. That's exactly why I --

2 Q. Opening report, Paragraph 414.

3 A. Thank you.

4 Paragraph 414. Sorry.

5 Q. Yes.

6 Second sentence.

7 A. Yes.

8 "Google conditioned the use of AdX (the
9 tying product) with the sale of DFP -- of its DFP ad
10 server (the tied product). "

11 Q. So in your tying analysis, did you consider
12 AdX to be the tying product and DFP to be the tied
13 product?

14 A. I did.

15 Q. Do AdX Direct Tags enable third-party ad
16 servers to call AdX to serve an ad?

17 MS. YOUNG: Objection; form.

18 A. I believe that's what they used to be able to
19 do when they were used.

20 Q. (BY MR. EWALT) Do AdX Direct Tags allow a
21 publisher to request ads from AdX in real time even if
22 the publisher does not use DFP?

23 MS. YOUNG: Objection; form.

24 Q. (BY MR. EWALT) And I can -- you can take a
25 look at Paragraph 429 of your opening report if that's

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1 helpful.

2 A. Okay.

3 Q. And then I'll ask it again. Let me know when
4 you're ready.

5 A. Thank you very much.

6 Yes. Yes, it could.

7 Q. Let me just ask it so we have a clear record
8 here.

9 A. Uh-huh.

10 Q. Do AdX Direct Tags allow a publisher to
11 request ads from AdX in real time even if the
12 publisher does not use DFP?

13 MS. YOUNG: Objection; form.

14 A. Yes.

15 Q. (BY MR. EWALT) Do AdX Direct Tags allow a
16 publisher to receive tags from AdX even if a publisher
17 does not use DFP?

18 A. I believe they do.

19 Q. All right. Could you please turn to Page 157
20 of your report.

21 You see Figure 12 there?

22 A. Yes.

23 Q. And the red dots refer to AdX direct tag,
24 right?

25 A. Yes.

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1 Q. Have AdX direct tags been in use since at
2 least 2014?

3 A. They have been in use at the data set we --
4 they were listed as being in use in the data set we
5 evaluated.

6 Q. And in use in that data set since at least
7 2014?

8 A. That is correct.

9 Q. Can a publisher still use AdX direct tags
10 today?

11 MS. YOUNG: Objection; form.

12 A. As I understand it, these were legacy things
13 that -- so they may still exist, some publishers that
14 could use them.

15 Q. (BY MR. EWALT) Is it your understanding that
16 AdX sends real-time bids into DFP?

17 A. That is my understanding.

18 Q. What is the basis of that understanding?

19 A. Oh, sorry. AdX sends real-time bids into --
20 AdX is the -- as the DFP allows publishers to offer
21 inventory that is -- can receive real-time bids.

22 Q. Let me -- let me ask that question again. If
23 you don't understand the question, let me know.

24 A. Okay.

25 Q. Is it your understanding that AdX sends

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1 forced to sign a DFP/AdX contract. Was the only way
2 they could do so. And that gave -- made it a
3 contractual tie.

4 Q. All right. So if I understand this right,
5 it's your opinion that Google implemented the alleged
6 tie of DFP to AdX through technical limitations
7 beginning in 2019 [verbatim] and contractual
8 provisions beginning in 2016?

9 MS. YOUNG: Objection; form.

10 A. That is correct.

11 MS. YOUNG: And think I you meant 2009.
12 I think you said 2019.

13 MR. EWALT: Thank you very much.

14 MS. YOUNG: Just for the purpose of the
15 record, yeah.

16 MR. EWALT: I'll fix it.

17 Q. (BY MR. EWALT) Is it your opinion that Google
18 implemented the alleged tie of DFP to AdX through
19 technical limitations beginning in 2009 and
20 contractual provisions beginning in 2016?

21 A. Okay. Yes, that is my opinion. It's my
22 understanding.

23 Q. What technical limitations are you referring
24 to?

25 A. Okay. So if we go to -- technical

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1 limitations I refer to.

2 Q. I'll suggest a paragraph. You tell me if
3 this is the right one.

4 A. 424.

5 Q. I was going to go 435.

6 A. Oh, okay.

7 Q. But you tell me if it's that -- if that's not
8 right.

9 A. Yes. Yes, that's one of the technical
10 limitations.

11 Q. Okay. And were there other technical
12 limitations, other than the one that you refer to in
13 Paragraph 435, through which Google implemented the
14 tie?

15 A. I think not necessarily 2009, but there were
16 other things that emerged that I described earlier
17 regarding how they implemented their GPT tags and
18 other tags that had limitations on them as well.

19 Q. But is it -- is it fair to say that there was
20 not a tie until this technology that you're talking
21 about -- technical limitation, rather, that you're
22 talking about in 2009?

23 A. Yeah. That was --

24 MS. YOUNG: Objection; form.

25 Go ahead.

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1 A. That was the critical decision point because
2 at that point Google had the evidence that I -- that
3 I -- that I -- I list there the ability to offer
4 third-party ad servers access to real-time bidding.

5 Q. (BY MR. EWALT) And that technology, that
6 technical limitation, is called third-party Dynamic
7 Allocation; is that right?

8 A. Yes. Well, that's -- that wasn't a technical
9 limitation. That was a technical -- that was a -- a
10 technically feasible thing.

11 Q. And it was a limitation because --

12 A. They --

13 (Speaking simultaneously.)

14 Q. (BY MR. EWALT) -- it could do more?

15 A. No, because they didn't actually offer it.

16 Q. [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

21 A. [REDACTED]

[REDACTED]

23 Q. [REDACTED]

[REDACTED]

[REDACTED]

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7

Q. (BY MR. EWALT) Do you think --

8

9

A. It took them some time to get the full force of it in.

10

Q. When did the full force occur?

11

12

A. I would say that I would -- if I had to give a date, I would mark that as 2016.

13

14

15

16

Q. Do you think that Google should have offered third-party Dynamic Allocation to allow competing publisher ad servers to receive real-time bids from AdX?

17

MS. YOUNG: Objection; form.

18

19

20

21

A. My opinion is that had Google not had market power through AdX and had not been vertically integrated, that they -- and their ads of a product would have offered third-party Dynamic Allocation.

22

23

24

25

Q. (BY MR. EWALT) And is it your opinion that it was anticompetitive for Google not to build technology that would have allowed competing publisher ad servers to receive real-time bids from AdX?

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1 Q. And I'm trying to understand what you mean by
2 "tied contractually."

3 A. It meant that if you wanted to access AdX
4 demands, you have to use DFP.

5 Q. Okay. So I just want to confirm that it is,
6 in fact, your opinion that Google's contracts required
7 publishers to use DFP in order to obtain access to AdX
8 demand?

9 MS. YOUNG: Objection; form.

10 A. My understanding of -- of those contracts --
11 and I will caveat that it is my understanding because
12 I am not a lawyer -- was that that's what they
13 would -- would do.

14 MS. YOUNG: So we've been going over an
15 hour, so it's just for court reporter's purposes and
16 everyone else's that we break at a good time.

17 MR. EWALT: Okay.

18 Q. (BY MR. EWALT) And I believe you said that
19 Google implemented this contractual tie in June 2016?

20 A. Yes.

21 Q. And so there was no contractual tie before
22 June 2016; is that correct?

23 MS. YOUNG: Objection; form.

24 A. That is my -- well, that -- that's -- that's
25 my understanding of what a contractual tie was of that

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1 date.

2 Q. (BY MR. EWALT) Is it your opinion that the
3 contractual tie is contained in the unified DFP AdX
4 contract?

5 MS. YOUNG: Objection; form.

6 A. I believe that that's where it is.

7 Q. (BY MR. EWALT) Have you ever reviewed a
8 unified DFP AdX contract?

9 A. I have looked at it. And had a normal
10 reaction to the contract.

11 Q. You don't cite a unified DFP AdX contract in
12 your reports, do you?

13 MS. YOUNG: Objection; form.

14 A. No, I cite other things describing these
15 things.

16 Q. (BY MR. EWALT) But it's your testimony that
17 you have, in fact, reviewed such a contract?

18 A. I believe at some time that I did, but I
19 remember I -- I don't remember it as something I felt
20 I could pass.

21 Q. Is it fair to say you didn't rely on the
22 terms of the unified DFP AdX contract in forming the
23 opinions in your reports?

24 MS. YOUNG: Objection; form.

25 A. I relied on the descriptions of these things

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1 as listed in the footnotes here.

2 Q. (BY MR. EWALT) But you did not rely on the
3 contracts themselves in reaching your opinions about
4 the contractual tie.

5 Is that fair?

6 MS. YOUNG: Objection; form.

7 A. I didn't feel it was -- I -- it was not my
8 role to provide a legal analysis of those, which is
9 what you're asking for there.

10 Q. (BY MR. EWALT) Could you please turn to
11 Paragraph 297 of your rebuttal report.

12 A. Yes.

13 Q. And that paragraph describes a communication
14 from Google to publishers in connection with the move
15 to the unified contract; is that right?

16 MS. YOUNG: Objection; form.

17 A. Can you repeat the question?

18 Q. (BY MR. EWALT) Does Paragraph 297 of your
19 rebuttal report describe the communication from Google
20 to publishers about the transition to the unified DFP
21 AdX contract?

22 A. Yes.

23 Q. I want to direct your attention to the second
24 sentence there -- third sentence, reads: "The message
25 states to continue using AdX, our partners now need to

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1 sign a new contract that includes terms for both AdX
2 and DFP. This contract will give you access to DFP
3 features, but there is no obligation to use them."

4 Do you see that?

5 A. Yes.

6 Q. And so you understand that when it was
7 rolling out the unified DFP AdX contract, Google told
8 publishers that they would have no obligation to use
9 DFP; is that right?

10 MS. YOUNG: Objection; form.

11 A. I -- I acknowledge that's what it says in my
12 report.

13 Q. (BY MR. EWALT) And did you have -- how does
14 the fact that Google told publishers that there was no
15 obligation to use DFP inform your analysis of whether
16 the unified DFP AdX contract actually required
17 publishers to use DFP?

18 MS. YOUNG: Objection; form.

19 A. Well, it did require them to sign that -- I
20 don't -- I'm not sure the distinction you're trying
21 to -- to make.

22 MS. YOUNG: Mr. Ewalt, is this --

23 MR. EWALT: This is a good time for a
24 break. Yeah. Go off the record.

25 THE VIDEOGRAPHER: Now the end of

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1 A. The specific requirement of UPR that
2 restricted that ability did not simplify things for
3 publishers.

4 Q. (BY MR. EWALT) Does UPR have any effect on a
5 publisher that chooses not to use DFP?

6 MS. YOUNG: Objection; form.

7 A. As I understand it, UPR was implemented
8 through DFP, So not directly for other people.

9 Q. (BY MR. EWALT) Does UPR require that the
10 same price floors apply to AdX and other exchanges?

11 A. Well, there were some restrictions on how you
12 could differentiate your price floors between
13 exchanges, as I understood it.

14 Q. Does UPR prevent publishers from setting
15 price floors in Google Ad Manager at advantaged AdX
16 over other ad exchanges?

17 MS. YOUNG: Objection; form.

18 A. I don't think that they did. I -- I -- I
19 believe that the -- I can't recall exactly, but I
20 thought there might be -- I -- I recall an asymmetry
21 with how those price floors -- the UPR rules applied.

22 Q. (BY MR. EWALT) Should Google be required to
23 allow its customers to use Google Ad Manager in a way
24 that disadvantages AdX?

25 MS. YOUNG: Objection; form.

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1 implementation of Dynamic Allocation harmed market --
2 harmed the market for ad exchanges, but not other, I
3 did not express opinions with respect to other
4 markets.

5 Q. Was Dynamic Allocation a feature that
6 DoubleClick launched in 2007?

7 A. All right. You're testing --

8 Q. All right.

9 A. -- me on--

10 Q. Opening report --

11 (Speaking simultaneously.)

12 A. But I'm sure you have --

13 Q. (BY MR. EWALT) Opening report Paragraph 552.

14 A. Thank you.

15 Yes, I agree that in 2007 they had
16 launched a feature they had called Dynamic Allocation.

17 Q. And so Dynamic Allocation was launched before
18 Google acquired DoubleClick?

19 A. Well, the feature that they called it was,
20 yes.

21 Q. When Dynamic Allocation was launched, were ad
22 networks the primary way that advertisers purchased
23 display advertising?

24 MS. YOUNG: Objection; form.

25 A. The ad networks was one of them that was

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1 still Direct Deals as well.

2 Q. (BY MR. EWALT) Did ad networks bid in real
3 time?

4 A. My understanding was that ad networks could
5 not do bid by in real time.

6 Q. Did ad networks purchase display inventory
7 through sequential process known as the Waterfall?

8 A. Yes.

9 Q. Did the Waterfall lead to publishers missing
10 out on more valuable ad inventory allocation?

11 MS. YOUNG: Objection; form.

12 A. I think that's a reasonable conclusion.

13 Q. (BY MR. EWALT) Was Dynamic Allocation an
14 improvement over the Waterfall?

15 A. Enabling real-time bidding of that kind was,
16 I believe, a potential improvement over the Waterfall.

17 Q. Did Dynamic Allocation help publishers make
18 more money than they could make under the Waterfall?

19 MS. YOUNG: Objection; form.

20 A. I believe that they did help some publishers
21 make more money than they could under the Waterfall.

22 Q. (BY MR. EWALT) When Dynamic Allocation
23 launched, were ad exchanges competing against each
24 other in real time?

25 A. No, they were not.

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1 Q. When did ad exchanges start competing against
2 each other in real time?

3 A. I'm not sure that they ever did.

4 Q. Okay. So is it your understanding that ad
5 exchanges do not compete against in each other in real
6 time today?

7 A. I -- sorry. Let me correct.

8 I thought you said "ad networks."

9 Q. Oh.

10 A. Could you repeat that question again?

11 Q. I might have misspoken. I'll --

12 A. No, I just -- no, that's what I heard so...

13 Q. Okay. When did ad exchanges start competing
14 against each other in real time?

15 A. I don't know the precise timing of entry of
16 all of the ad exchanges, so I don't have a date for
17 you for that.

18 Q. Does early 2010 sound about right?

19 A. That does sound about right.

20 Q. Did Google modify Dynamic Allocation once ad
21 exchanges started competing against each other in real
22 time?

23 MS. YOUNG: Objection; form.

24 A. I cannot recall at the moment.

25 Q. (BY MR. EWALT) Is it your view that it -- it

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1 was anticompetitive for Google to have not modified
2 Dynamic Allocation so that bids from rival non-AdX
3 exchanges could compete in real time against AdX?

4 MS. YOUNG: Objection; form.

5 A. That wasn't my opinion.

6 Q. (BY MR. EWALT) Did Header Bidding allow
7 participating ad exchanges to compete against each
8 other in real time?

9 A. Header Bidding enabled -- enabled publishers
10 to solicit real-time bids from multiple exchangers, so
11 enabled that competition.

12 Q. Did publisher start to experiment with Header
13 Bidding around 2014?

14 A. Yes.

15 MS. YOUNG: Objection; form.

16 Go ahead.

17 A. Yes.

18 Q. (BY MR. EWALT) Did Google modify Dynamic
19 Allocation once publishers started to experiment with
20 Header Bidding?

21 A. Not initially, no.

22 Q. What is your understanding of the term "Last
23 Look"?

24 A. My understanding of the term "Last Look" is
25 that after DFP has received bids from Header Bidding,

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1 that prior to soliciting those bids, or in this case
2 offers of inventory and floors to -- to AdX, they are
3 able to decide their own bid by for AdX.

4 Q. Did Last Look emerge from the interaction
5 between Dynamic Allocation and Header Bidding?

6 A. Last Look emerged primarily from -- from
7 Dynamic Allocation, but it was a thing that was made
8 apparent competitively through Header Bidding.

9 Q. Was Last Look a product feature that Google
10 designed?

11 MS. YOUNG: Objection; form.

12 A. No, Last Look was a -- a -- a constraint that
13 arose out of the way Dynamic Allocation was set up and
14 Google's choices with regard to which exchange got the
15 Last Look.

16 Q. (BY MR. EWALT) And it was also a consequence
17 of the way that publishers chose to use Header
18 Bidding, correct?

19 MS. YOUNG: Objection; form.

20 A. Publishers only had only a certain set of
21 choices they could engage in because of being forced
22 to -- to utilize an approach such as Header Bidding.
23 And so those things interacted with one another.

24 Q. (BY MR. EWALT) If there had been no Header
25 Bidding, could there have been a Last Look?

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1 MS. YOUNG: Objection; form.

2 A. I think in terms of the competitive
3 consequences of Last Look, it wouldn't have been an
4 issue if there had been no Header Bidding.

5 Q. (BY MR. EWALT) After publishers started
6 experimenting with Header Bidding, was it
7 anticompetitive for Google not to modify bids --
8 excuse me, let me start over.

9 After publishers started experimenting with
10 Header Bidding, was it anticompetitive for Google not
11 to modify DFP so that bids from rival exchanges could
12 compete in real time against AdX bids?

13 MS. YOUNG: Objection; form.

14 A. My analysis was that had ad server market
15 been a competitive market and Google not been
16 integrated into an exchange, that in that scenario, in
17 setting who it was that received -- which exchange
18 received the Last Look, Google would not have
19 necessarily selected its own exchange and may have
20 indeed allowed publishers to selected that exchange.

21 Q. (BY MR. EWALT) So is that a way of saying
22 your -- in your counterfactual world Google was not
23 vertically integrated and did not have monopoly power?

24 A. That's correct.

25 Q. Why did you pick that as your counterfactual

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1 originated.

2 Q. (BY MR. EWALT) Okay. And is that answer the
3 same with respect to all of the conduct that you
4 evaluated in your reports?

5 A. Yes.

6 MS. YOUNG: Objection; form.

7 A. Oh. Yes.

8 Q. (BY MR. EWALT) Okay. In either of your
9 reports did you express an opinion about the overall
10 net effect of UPR considering all the effects on both
11 advertisers and publishers?

12 MS. YOUNG: Objection; form.

13 A. No, I only engaged in an analysis of whether
14 it was anticompetitive with respect to the -- the
15 methodology -- the method I've already outlined.

16 Q. (BY MR. EWALT) In either of your reports did
17 you express an opinion about the overall net effect of
18 Dynamic Allocation considering all of the effects on
19 both advertisers and publishers?

20 MS. YOUNG: Objection; form.

21 A. No. I didn't analyze a world with or without
22 Dynamic Allocation. Just a world with or without
23 Google's particular implementation of Dynamic
24 Allocation.

25 Q. (BY MR. EWALT) In either of your reports did

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1 you express an opinion about the overall net effect of
2 Enhanced Dynamic Allocation considering all the
3 effects on both advertisers and publishers?

4 MS. YOUNG: Objection; form.

5 A. No, I only considered the effects of Google's
6 implementation of Enhanced Dynamic Allocation compared
7 to a counterfactual where it didn't implement it in
8 that way.

9 Q. (BY MR. EWALT) In either of your reports did
10 you express an opinion about the overall net effect of
11 line item capping considering all the effects on both
12 advertisers and publishers?

13 MS. YOUNG: Objection; form.

14 A. As before, I considered the impact of line
15 item capping in a world with or without Google having
16 market power in -- in -- in publisher ad servers.

17 Q. (BY MR. EWALT) So is it fair to say that you
18 did not express an opinion in your reports about the
19 overall net effect of line item capping considering
20 all the effects on both advertisers and publishers?

21 MS. YOUNG: Objection; form.

22 A. My analysis only concerned the impact on the
23 competition in ad exchangers as a result of Google's
24 line item capping, which itself has effects on both
25 advertisers and publishers.

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1 Dynamic Allocation, Google had to make a decision as
2 to who received -- which exchange received First Look
3 or Last Look in the process of implementing that.

4 Its decision was that its own exchange
5 would receive the Last Look advantage. And that was
6 the particular implementation that I analyzed as to
7 whether -- had Google had a competitive ad server
8 market or faced a competitive ad server market,
9 whether they would have made such a decision.

10 Q. (BY MR. EWALT) Was there any implementation
11 of Dynamic Allocation other than the implementation
12 that Google did?

13 A. Conceptually, of course.

14 Q. In the real world, because you're evaluating
15 the effects of the actual conduct, right?

16 A. Yeah. They had market power. They had
17 monopoly power. I'm -- I don't think anyone's
18 surprised that they would do that in their own
19 interest and not believe that there is any other way.

20 However, if you imagine a counterfactual
21 world in which they were just running ad servers in
22 competition with other ad servers, different things
23 would have happened.

24 Q. So are you disputing -- let me strike that.

25 Am I understanding you correctly that

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1 you did not evaluate Dynamic Allocation generally?

2 MS. YOUNG: Objection; form.

3 A. The existence or not of Dynamic Allocation
4 was not a conduct that I evaluated.

5 Q. (BY MR. EWALT) Did you --

6 MS. YOUNG: Are you finished answering
7 your question?

8 THE WITNESS: Yes.

9 MS. YOUNG: Okay.

10 Q. (BY MR. EWALT) Did you evaluate the existence
11 of Enhanced Dynamic Allocation?

12 A. The existence of Dynamic -- of Enhanced
13 Dynamic Allocation or not, or the enhanced part of
14 Dynamic Allocation versus Dynamic Allocation, was not
15 a conduct that I evaluated.

16 Q. Did you evaluate the existence of UPR?

17 A. I evaluated the existence of UPR in a world
18 where UPR was not imposed. That is, as it was prior
19 to the imposing of UPR.

20 Q. So your answer for UPR was a little bit
21 different than the answer for Enhanced Dynamic
22 Allocation and Dynamic Allocation.

23 A. It's no different. If you look in my report,
24 both of them, I'm very clear on the conducts that I am
25 evaluating and looking at.

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1 A. Yes.

2 Q. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 Q. (BY MR. EWALT) Did Google develop Bernanke so
14 that Google Ads could clear more impressions on AdX,
15 specifically those impressions that Google Ads would
16 have lost due to high publisher floor prices?

17 MS. YOUNG: Objection; form.

18 A. Yes, that's what it said it was trying to do.

19 Q. (BY MR. EWALT) Did Google develop Bernanke to
20 improve the match rate on AdX?

21 A. It was trying to improve and increase the
22 number of transactions going through AdX as compared
23 to elsewhere.

24 Q. Did Google develop Bernanke to help sell
25 impressions that otherwise would not have been sold

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1 due to high publisher floor prices?

2 MS. YOUNG: Objection; form.

3 A. It developed Bernanke to sell impressions
4 that otherwise would have not been sold due to high
5 publisher floor prices on AdX.

6 Q. (BY MR. EWALT) Would you please turn to
7 Paragraph 740 to 743 of your opening report.

8 A. Yes.

9 Q. And in those paragraphs you describe three
10 scenarios where Bernanke could impact AdX auctions?

11 A. Yes.

12 Q. The first scenario is when Google Ads submits
13 the highest and second highest bids into the AdX
14 auction, right?

15 A. Yes.

16 Q. In that first scenario, does Bernanke have
17 any effect on rival ad-buying tools?

18 A. No.

19 Q. Second scenario is when no buyer submits a
20 bid above the AdX floor price without Bernanke, but
21 Bernanke allows Google Ads to bid above the floor
22 price and win the impression.

23 Is that fair?

24 A. Yes.

25 Q. In the second scenario, does Bernanke have

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1 any effect on rival ad-buying tools?

2 A. No.

3 Q. In the second scenario, does Bernanke allow
4 transactions to clear that otherwise would not have
5 cleared?

6 A. Yes.

7 Q. In the second scenario, does Bernanke expand
8 the output of transactions?

9 MS. YOUNG: Objection; form.

10 Go ahead.

11 A. Yes.

12 Q. (BY MR. EWALT) Do publishers and advertisers
13 benefit from Bernanke expanding output in the second
14 scenario?

15 MS. YOUNG: Objection; form.

16 A. Well, Google is lowering its price so that
17 they potentially benefit.

18 Q. (BY MR. EWALT) The third scenario is when a
19 rival buying tool would have won the impression
20 without Bernanke but Bernanke allows Google Ads to win
21 instead; is that right?

22 A. That's right.

23 Q. And this third scenario is the only one where
24 Bernanke could harm rival buying tools.

25 Is that fair?

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1 to be called AdWords, by \$230 million per year?

2 A. I want to state for the record, since you've
3 been confused by this before, that when we're talking
4 about Bernanke with respect to the circulation, we're
5 talking about Bernanke Version 1.

6 We are not talking about Bernanke as its
7 whole implementation.

8 Q. Fair. Okay.

9 And so can we agree that we'll just call
10 it Bernanke Version 1? We can refer to that as
11 Bernanke and then we can refer to Global Bernanke
12 separately.

13 A. Well, it's not Global Bernanke. It's
14 Bernanke Version 2, and then Global Bernanke was
15 another thing entirely.

16 Q. And so --

17 A. There was another -- it was another --

18 Q. Iteration?

19 A. Sorry. Yeah.

20 Q. Okay. So let me ask the question again.

21 Does this simulation show that Bernanke
22 Version 1 would increase advertiser spend from Google
23 Ads by \$230 million per year?

24 MS. YOUNG: Objection; form.

25 A. Yes.

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1 Q. (BY MR. EWALT) Does this simulation show that
2 Bernanke Version 1 would decrease advertiser spend
3 from rival buying tools by \$75 million per year?

4 A. Yes.

5 Q. Is that \$75 million decrease what you were
6 describing in the third scenario we just talked about?

7 A. Yes, I believe so.

8 Q. And was the net effect of the \$230 million
9 increase for Google Ads and the \$75 million decrease
10 for rival buying tools a \$155 million increase in
11 advertiser spend?

12 A. Yes.

13 Q. If Google Ads could increase -- strike that.
14 If Google Ads' spend could increase by
15 \$230 million and rival ad-buying tools lost only
16 \$75 million, where did the other \$155 million in ad
17 spending come from?

18 MS. YOUNG: Objection; form.

19 A. Well, isn't -- pardon me for my ability to
20 arithmetic at this part of the afternoon.

21 But isn't 155 million equal to 230 minus
22 75?

23 Q. (BY MR. EWALT) I believe you're correct about
24 that.

25 A. Yeah.

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1 Q. So did -- is the \$155 million increase in ad
2 spend an increase in output?

3 MS. YOUNG: Objection; form.

4 A. It's an -- it's an increase in surplus.

5 Q. (BY MR. EWALT) In -- in advertiser surplus?

6 A. Well, economic surplus.

7 Q. All right. And --

8 A. I could draw you a picture.

9 Q. Okay. So it's an increase in economic
10 surplus.

11 And do advertisers receive some of that
12 surplus?

13 A. Yes.

14 Q. Do you publishers receive some of that
15 surplus?

16 A. Yes.

17 Q. So is fair to say that Bernanke Version 1
18 benefitted both advertisers and publishers?

19 MS. YOUNG: Objection; form.

20 A. That would be a fair statement.

21 Q. (BY MR. EWALT) All right. Could you please
22 turn now to Paragraph 750 of your opening report.

23 (Marked Gans Exhibit No. 10.)

24 Q. (BY MR. EWALT) Okay. I'm handing you what's
25 been marked as Exhibit 10. This is a presentation

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1 Are you aware that prior to Bernanke there was
2 a program called buy-side DRS?

3 A. Yes. I see. Right.

4 Q. And is buy-side DRS the program that only
5 reduced the margin but did not have a debt account?

6 A. Right at the moment I have -- I would have to
7 review my report again to remember which version was
8 under which name, which is what I am struggling with
9 right here.

10 Q. Okay. So is it possible that Bernanke
11 Version 1 also had a debt account?

12 A. I would have -- I would -- I would need some
13 time to refresh my memory regarding the exhibits and
14 my report to --

15 Q. Okay.

16 A. -- to confirm with certainty.

17 Q. Okay. Well, let's turn back to Exhibit 10,
18 Page 167.

19 A. Yes.

20 Q. Did Bernanke increase match queries by
21 8.3 percent?

22 MS. YOUNG: Objection; form.

23 A. Did Bernanke increase matched queries by
24 19.6 percent, you said?

25 Q. (BY MR. EWALT) Did Bernanke increase matched

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1 queries by 8.3 percent?

2 A. What am I supposed to be looking at?

3 Q. Ah, yes. In the box, dotted line box on the
4 left side of the page. Just inside the top of that.

5 A. Yes.

6 Q. So the question is: Did Bernanke increase --

7 A. Oh, I see.

8 Q. -- matched queries by 8.3 percent?

9 A. I see. It does say that data, yes.

10 Q. And then looking above the box on the left
11 side, did Bernanke increase advertiser spending by
12 \$150 million per year?

13 A. Relative to the case without the Bernanke
14 version in this, yes.

15 Q. And that increase in advertiser spending was
16 due to Bernanke allowing more matches between
17 publishers and advertisers increasing output, correct?

18 A. What you're asking me is about -- potentially
19 about a counterfactual, which was not the
20 counterfactual I analyzed. It's with and without
21 Bernanke as in these experiments.

22 But with that caveat, yes.

23 Q. And if you look on the right side in that
24 oval at the top, I'll ask you, does Exhibit 10 show
25 that Bernanke increased publisher revenue by

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1 \$84 million per year?

2 A. Yes.

3 Q. So according to your Exhibit 10, did Bernanke
4 benefit both advertisers and publishers?

5 MS. YOUNG: Objection; form.

6 A. Well, Bernanke wasn't a conduct I evaluated,
7 as I already mentioned.

8 But in a world with and out -- with and
9 without Bernanke as in those experiments, one effect
10 of it was a short-run effect of increasing the revenue
11 of publishers.

12 Q. (BY MR. EWALT) And advertisers?

13 MS. YOUNG: Objection; form.

14 A. Potentially of advertisers as well.

15 MR. EWALT: Let's go off the record.

16 THE VIDEOGRAPHER: This is now the end
17 of Video 5 of Joshua Gans. We're off the record. The
18 time is 4:59.

19 (Break from 4:59 p.m. to 5:18 p.m.)

20 THE VIDEOGRAPHER: Now back on the
21 record. Video 6 of Joshua Gans. The time is
22 approximately 5:18.

23 Q. (BY MR. EWALT) Professor Gans, during the
24 break, did you discuss the substance of this case with
25 counsel?

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1 procedure as procompetitive."

2 Do you see that?

3 A. Yes.

4 Q. Was DRS Version 1 procompetitive?

5 A. In a sense that it --

6 MS. YOUNG: Objection; form.

7 Sorry. Go ahead and answer.

8 A. In a sense that it involved Google reducing
9 its take rate only, it -- it -- it could be regarded
10 as -- as procompetitive or welfare enhancing.

11 Q. (BY MR. EWALT) Is there any sense in which
12 DRS Version 1 was not welfare enhancing?

13 A. I do not -- I did not find any sense that it
14 wasn't.

15 Q. Would you please turn to Paragraph 809 of
16 your opening report.

17 The first sentence of that paragraph
18 reads --

19 MS. YOUNG: Can you give me one second?
20 I'm going to -- it's taking me a little while to flip
21 to it.

22 Sorry. Go ahead.

23 Q. (BY MR. EWALT) First sentence of
24 Paragraph 809 of your opening report reads: "The
25 combined effects of Last Look in DRS v2 led to revenue

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1 Q. Does Footnote 1030 cite to Exhibit 11?

2 A. Yes.

3 Q. And in particular you cite Page 467 of
4 Exhibit 11; is that correct?

5 A. Yes.

6 Q. And please turn to Page 467.

7 A. Okay.

8 Q. And that page states that DRS consistently
9 makes publishers more money.

10 Do you see that?

11 A. I see that it says that.

12 Q. And according to Exhibit 11, does DRS
13 Version 2 consistently make publishers more money?

14 A. As compared to no DRS.

15 Q. Would you please turn to Page 469 in
16 Exhibit 11?

17 A. Yes.

18 Q. You see the top of that page defines
19 publisher revenue as the some of AdX revenue and
20 third-party network revenue?

21 A. Yes.

22 Q. And you understand that third-party network
23 revenue refers to rival ad exchanges and ad networks
24 that would compete against AdX through remnant items.

25 A. Yes.

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1 MS. YOUNG: Objection; form.

2 Sorry. Go ahead.

3 Q. (BY MR. EWALT) At the bottom of Page 469,
4 Exhibit 11 reads: "Overall impact of DRS plus
5 2.80 percent publisher revenue increase."

6 Do you see that?

7 A. Yes.

8 Q. According to Exhibit 11, does DRS v2 increase
9 publisher revenue by [REDACTED] percent even taking into
10 account impacts on rival ad exchanges and ad networks?

11 MS. YOUNG: Objection; form.

12 A. According to this document, it does relative
13 to no DRS.

14 Q. (BY MR. EWALT) Did DRS v2 increase output in
15 the ad exchange market by [REDACTED] percent?

16 MS. YOUNG: Objection; form.

17 A. According to this document, in the short run,
18 DRS Version 2 compared to DRS, this document argues
19 that it increased output.

20 Q. (BY MR. EWALT) And is an output increase
21 procompetitive?

22 MS. YOUNG: Objection; form.

23 A. Output increases are welfare enhancing.

24 Q. (BY MR. EWALT) In either of your reports, did
25 you express an opinion about the overall net effect of

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1 DRS considering all the effects on both advertisers
2 and publishers?

3 MS. YOUNG: Objection; form.

4 A. No, I didn't, because the conduct I evaluated
5 was not that.

6 Q. (BY MR. EWALT) All right. Let's talk about
7 line item capping.

8 A. Saving the best until last.

9 Okay. Let's go.

10 Q. Have you seen evidence that publishers using
11 large numbers of active line items impose costs on
12 Google?

13 MS. YOUNG: Objection; form.

14 A. I've seen -- I recall claims made by
15 Professor Baye to that effect.

16 (Marked Gans Exhibit No. 12.)

17 Q. (BY MR. EWALT) I'm handing you what's been
18 marked as Exhibit 12. It's a document titled
19 "PRD/Strat Review: Network Health." First page bears
20 Bates No. GOOG-DOJ-06875572.

21 Do you see that?

22 A. I do.

23 Q. Would you please turn to Paragraph 370 of
24 your rebuttal report?

25 A. Of the rebuttal report.

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1 reasonable impact on system stability) at the end of
2 the day was forcing them to change their business
3 strategy kicking out HBs, head of bidding."

4 Quoting a statement from discussion with
5 The Washington Post.

6 "I note that even if there were such
7 costs, Google, given its monopoly power and
8 integration, would not have an incentive to make the
9 optimal trade off. Professor Milgrom, as he
10 consistently does throughout his analysis, fails to
11 consider Google's broad multimarket incentives in
12 making these decisions."

13 And then we quoted the last two ones
14 before.

15 So you'll see there that captures what
16 I've already just described to you.

17 Q. You're aware that Google granted exceptions
18 to the line item cap to some publishers?

19 A. Yes.

20 Q. And did Google charge those publishers
21 additional fees when they granted the exceptions to
22 the line item cap?

23 A. No.

24 Q. Was it anticompetitive for Google not to
25 charge more for exemptions from line item limits?

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1 publishers.

2 Q. (BY MR. EWALT) Do you have any reason to
3 believe that any publisher was prevented from using
4 Header Bidding because of the line item caps?

5 MS. YOUNG: Objection; form.

6 A. I don't believe the line item caps was a full
7 prevention of using Header Bidding. It just made it
8 more difficult to use Header Bidding.

9 Q. (BY MR. EWALT) Would you please turn to
10 Paragraph 657 of your opening report.

11 A. Yes.

12 Q. And there you talk about Header Bidding
13 Manager.

14 Is that fair?

15 A. Seems that way.

16 Q. Did Google rule out Header Bidding Manager in
17 2021?

18 A. Yes. Started enrolling publishers into it in
19 2021 is what I know.

20 Q. And is Header Bidding Manager a tool that
21 allows publishers to set up Header Bidding without
22 having to set up large numbers of line items?

23 A. I believe that's what it does.

24 Q. Does the availability of Header Bidding
25 Manager reduce the effects on Header Bidding that you

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1 found were caused by line item caps?

2 MS. YOUNG: Objection; form.

3 A. Would you ask that question again?

4 Q. (BY MR. EWALT) Does the availability of
5 Header Bidding Manager reduce the effects on Header
6 Bidding that you found were caused by line item caps?

7 MS. YOUNG: Same objection.

8 A. It -- it may do so for some publishers.

9 Q. (BY MR. EWALT) In either of your reports, did
10 you express an opinion about the overall net effect of
11 line item caps considering the effects on both
12 advertisers and publishers?

13 MS. YOUNG: Objection; form.

14 A. Line item caps were a restriction on -- on
15 publishers, and so my analysis was focused on the
16 impact on competitive conditions that faced those --
17 that -- that were in the publisher facing markets.

18 Q. (BY MR. EWALT) And did you consider impacts
19 on advertisers from line item capping?

20 A. I didn't directly consider that.

21 Q. Let's talk about data redactions.

22 Would you please turn to Paragraph 688
23 of your opening report?

24 A. Yes.

25 Q. The first sentence reads: "This section

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1 Exhibit 14?

2 A. Oh, you've given me two.

3 Q. Oh.

4 A. Paragraph 11. I'm sorry. I'm looking at
5 page.

6 Yes.

7 Q. Okay. And the second sentence there says:
8 "Prior to September 2019, Google allowed buyers to opt
9 out of including information about their bids in BDT
10 files."

11 You see that?

12 A. Yes.

13 Q. Do you have any reason to doubt that prior to
14 September 2019 Google allowed buyers to opt out of
15 including information about their bids in BDT files?

16 A. No.

17 MS. YOUNG: Objection; form.

18 A. No.

19 Q. (BY MR. EWALT) Are you aware that buyer
20 opt-outs limited the amount of bid data that was
21 available to publishers?

22 A. I would expect that they would.

23 Q. Are you aware that when Google made the data
24 redactions discussed in your reports they also removed
25 the ability of buyers to opt out of having their bid

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1 receive BDT files.

2 Do you see that?

3 A. Yes.

4 Q. [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

9 MS. YOUNG: Go ahead.

10 A. No.

11 Q. (BY MR. EWALT) Do you have any reason to
12 believe that any publisher was prevented or dissuaded
13 from using Header Bidding because of the data transfer
14 files?

15 MS. YOUNG: Objection; form.

16 A. My analysis was in terms of how effective
17 they could -- effectively they could use Header
18 Bidding in order to create further exchange
19 competition, not necessarily whether they would
20 curtail the use of Header Bidding or not.

21 Q. (BY MR. EWALT) Is it fair to say you did not
22 analyze whether any publisher curtailed its use of
23 Header Bidding because of the data transfer files?

24 MS. YOUNG: Objection; form.

25 A. I was not able to -- I did not -- sorry.

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1 My analysis was on the impact of the
2 data redaction conduct on the ability of Header
3 Bidding to impact on ad exchange composition.

4 The manifestation of which might have
5 been a reduction in the use of Header Bidding or it
6 might not have.

7 Q. (BY MR. EWALT) Is it your opinion that the
8 redaction of the data files could have affected
9 competition in the ad exchange market even if it had
10 no impact on publisher usage of Header Bidding?

11 MS. YOUNG: Objection; form.

12 A. Yes, because it could have reduced their
13 ability to use Header Bidding effectively.

14 Q. (BY MR. EWALT) In either of your reports did
15 you express an opinion about the overall net effect of
16 the data redactions considering the effects on both
17 advertisers and publishers?

18 MS. YOUNG: Objection; form.

19 A. It was not necessary given the conduct was on
20 the publisher market.

21 Q. (BY MR. EWALT) So is fair to say that you did
22 not evaluate the effects of the data redactions on
23 advertisers?

24 A. My focus was on, as I said before, whether
25 Google would have engaged in this conduct had they had

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1 a competitive ad server market. And my conclusion was
2 that they would not have.

3 Q. Did you evaluate the effect of data
4 redactions on advertisers?

5 A. I wasn't --

6 MS. YOUNG: Objection; form.

7 Go ahead.

8 THE WITNESS: Sorry.

9 A. I wasn't calculating the incidents of damage
10 of the anticompetitive conduct, just the presence of
11 it and the harm -- the existence of harm to
12 competition.

13 MR. EWALT: We can go off the record.

14 THE VIDEOGRAPHER: This is now the end
15 of Video 6 of Joshua Gans. We're off the record. The
16 time is approximately 6:08.

17 (Break from 6:08 p.m. to 7:01 p.m.)

18 THE VIDEOGRAPHER: Now on the record of
19 Video 7 of Joshua Gans. The time is approximately
20 7:01.

21 Q. (BY MR. EWALT) Professor Gans, during the
22 break did you discuss the substance of this case with
23 counsel?

24 MS. YOUNG: Same instruction as earlier
25 today. Pursuant to the expert stipulation entered by